

THOMAS P. DREIFUERST,

Petitioner,

Case No. 11-CV-862

v.

WISCONSIN MOVERS SUPPLY COMPANY,
INC., FOX CITIES STORAGE, LLC, DA BOYS,
LLC, DUFRANE MOVING AND STORAGE,
INC., PRINCE INVESTMENTS, LLC

Respondents.

**RESPONSE TO PETITION FOR COURT-ORDERED INSPECTION OF
CORPORATION AND COMPANY RECORDS**

NOW COMES WISCONSIN MOVERS SUPPLY COMPANY, INC., FOX CITIES STORAGE, LLC, DA BOYS, LLC, DUFRANE MOVING AND STORAGE, INC., PRINCE INVESTMENTS, LLC (Respondents), by their attorneys, Menn Law Firm, Ltd., by Robert N. Duimstra, and as and for their Responses to the Petitioner's Petition for Court-Ordered Inspection of Corporation and Company Records, hereby state as follows:

1. Upon information and belief, Respondents admit the allegations set forth in paragraph 1 of the Petitioner's Petition; further affirmatively allege that Wisconsin Movers Supply Company, Inc. is dissolved.
2. Upon information and belief, Respondents admit the allegations set forth in paragraph 2 of the Petitioner's Petition.
3. Upon information and belief, Respondents admit the allegations set forth in paragraph 3 of the Petitioner's Petition.

4. Upon information and belief, Respondents admit the allegations set forth in paragraph 4 of the Petitioner's Petition.

5. Respondents lack sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations contained in paragraph 5, and therefore deny the same and put the Petitioner to his proof thereon.

6. Upon information and belief, Respondents admit the allegations set forth in paragraph 6 of the Petitioner's Petition.

7. Upon information and belief, Respondents deny the allegations set forth in paragraph 7 of the Petitioner's Petition.

8. Upon information and belief, Respondents deny the allegations set forth in paragraph 8 of the Petitioner's Petition.

9. Respondents deny the allegations set forth in paragraph 9 of the Petitioner's Petition.

RESPONDENTS' POSITION

There is no present need for the Court to order the inspection of corporation and company records, because the Petitioner either already has the requested corporation and company records in his possession, or §§180.1602 and 183.0405 do not require the production of what he is requesting.

A. CORPORATE ENTITIES - §180.1602

The Petitioner seeks various corporate records related to Wisconsin Movers Supply, Inc. and DuFrane Moving and Storage, Inc. The Petitioner either already has the requested corporate records in his possession, or §180.1602 does not require their

production. The statutory requirements §180.1602(2) places on corporations to make available corporate records are, in relevant part, as follows:

(a) Except as provided in par. (c) and sub. (4), a shareholder of a corporation who satisfies par. (b) may inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation:

1. Excerpts from any minutes or records that the corporation is required to keep as permanent records under s. 180.1601 (1).
2. **Accounting records** of the corporation.
3. The record of shareholders, except as provided in s. 180.1603 (3).

§180.1602(2) Wis. Stats. (emphasis added). Additionally, the requested records must be directly connected to the Petitioner's purpose for the record request.

§180.1602(2)(b)(5) Wis. Stats.

Recent caselaw on point noted that "accounting records" is a term not defined by statute. Ehlinger v. Hauser, 2010 WI 54, ¶¶ 149-152 (concurring opinion). Citing Bitters v. Milcut, Inc., Justice Roggensack, in concurrence, evoked the predecessor statute to §180.1602 for guidance. Id. ¶ 152 (concurring opinion) (internal quotations omitted) (citing Bitters v. Milcut, Inc., 117 Wis. 2d 48, 51 (Ct.App.1983)). The Bitters court ultimately construed the statute narrowly and held that interim profit and loss financial statements are not "books and records" required to be produced, whereas annual financial statements are. Bitters, 117 Wis. 2d at 50-53.

First, the Petitioner requested dissolution papers and a current asset list for Wisconsin Movers Supply, Inc. The only conceivable argument the Petitioner can make is that §180.1602(2) requires the Respondents to comply with the Petitioner's request. Provided other requirements are met, which they are not as discussed below, "accounting records of the corporation" are to be produced upon request. §180.1602(2)(a)(2) Wis. Stats. The statute does not define "accounting records," and on their face, none of the above-requested documents are "accounting records."

Further, the requested documents are not analogous to the “annual financial statement” discussed above, but are instead akin to the “interim financial statements” previously not required to be produced. Therefore, neither statute nor caselaw compels the production of these documents. §180.1602(2) Wis. Stats.

Second, the Petitioner’s requests are not “directly connected with his or her purpose” for the request as required by statute. Id. The Petitioner’s stated purpose for his information request is as follows: “to determine Tom Dreifuerst’s interests in these entities, to review and evaluate the performance and compensation of the management of the described entities, and to provide information necessary to permit Tom Dreifuerst to conclude his tax filings.” (Petition, Exh. B) The following items in the Petitioner’s corporate records request from both Wisconsin Movers Supply, Inc. and DuFrane Moving and Storage, Inc. are not directly connected to his stated purpose for those requests:

1. Bank statements from January 1, 2006 to present, including deposit tickets to support receipts and checks clearing the bank;
2. All financial statement for the years ended 2005 to 2010 and supporting general ledgers.

Further, if the Petitioner’s stated purpose is truly as noted above, that purpose could easily be satisfied by a review of the documents the Petitioner already has in his possession. Once again, neither statute nor caselaw compels the production of these documents.

B. LIMITED LIABILITY COMPANIES - §183.0405

The Petitioner seeks various company records related to Fox Cities Storage, LLC, Da Boys, LLC and Prince Investments, LLC. The statutory requirements §183.0405 places on LLCs to make available company records differ from those placed

on corporate entities by §180.1602. §183.0405 is specific in its mandate, and the Petitioner requests company records outside those required to be produced by the statute. Specifically, §183.0405(1) requires LLCs to make available the following company records:

(a) A list, kept in alphabetical order, of each past and present member and, if applicable, manager. The list shall include the full name and last-known mailing address of each member or manager, the date on which the person became a member or manager and the date, if applicable, on which the person ceased to be a member or manager.

(b) A copy of the articles of organization and all amendments to the articles.

(c) Copies of the limited liability company's federal, state and local income or franchise tax returns and financial statements, if any, for the 4 most recent years or, if such returns and statements are not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local income tax returns for the 4 most recent years.

(d) Copies of all operating agreements, all amendments to operating agreements and any operating agreements no longer in effect.

(e) Unless already set forth in an operating agreement, written records containing all of the following information:

1. The value of each member's contribution made to the limited liability company as determined under s. 183.0501(2).
2. Records of the times at which or the events upon which any additional contributions are agreed to be made by each member.
3. Any events upon which the limited liability company is to be dissolved and its business wound up.
4. Other writings as required by an operating agreement.

§183.0405(1) Wis. Stats. The Petitioner either already has the requested company records in his possession, or §183.0405 does not require their production. The following represents those company records the Petitioner requests, but which §183.0405 does not require production of:

1. Fox Cities Storage, LLC

- a. All bank statements from January 1, 2006 to present, including deposit tickets to support receipts and checks clearing the bank;
- b. Lease contracts in place from 2005 to present;
- c. All financial statements for the years ended 2005 to 2010 and supporting general ledgers.

2. Da Boys, LLC

- a. All bank statements from January 1, 2006 to present, including deposit tickets to support receipts and checks clearing the bank;
- b. Lease contract with DuFrane Moving & Storage, Inc.;
- c. All financial statements for the years ended 2005 to 2010 and supporting general ledgers.

3. Prince Investments, LLC

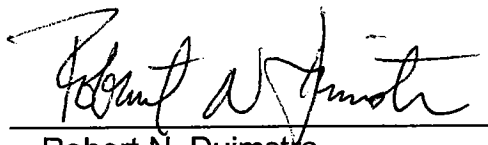
- a. All bank statements from January 1, 2006 to present, including deposit tickets to support receipts and checks clearing the bank;
- b. All financial statements for the years ended 2005 to 2010 and supporting general ledgers.

CONCLUSION

If the Petitioner desires duplicative production of corporation and company records he is entitled to by statute, the Respondents have no objection to producing the corporate records again, provided that the Petitioner bears the costs of such production and makes appropriate arrangement for such payment, and provided that payment related to that document production is received prior the Respondents undertaking the production effort. However, neither statute nor caselaw compels the production of many of the requested documents as discussed above, and the Respondents should not be required to produce them.

Dated this 30th day of November, 2011.

MENN LAW FIRM, LTD.

By: 
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Attorney for Respondents